

### **Remarks**

Claims 1-14 and 21-26 remain in the application, claims 15-20 were previously canceled, and claims 1, 8, and 21 have been amended. This transmittal is presented in response to the official office action and is believed to resolve the issues raised by the examiner. Applicant believes the claims as amended to be non-obvious and patentably distinct from all prior art.

#### **OA Item #1a: Claims rejection under 35 USC § 112, 1<sup>st</sup> paragraph – New Matter:**

The examiner has rejected claims 1-14 and 21-26 under 35 USC § 112 1<sup>st</sup> paragraph as being non-enabling due to the presence of new matter in the claims. Specifically, the examiner has rejected the limitation of “eraser material” as being unsupported by the specification as originally filed. Accordingly, applicants have deleted the noted limitation from the claims.

Given applicants amendments, applicants respectfully request that the examiner withdraw the rejection.

#### **OA Item #1b: Claims rejection under 35 USC § 112, 1<sup>st</sup> paragraph – New Matter:**

The examiner has rejected claims 1-14 and 21-26 under 35 USC § 112 1<sup>st</sup> paragraph as being non-enabling due to the presence of new matter in the claims. Specifically, the examiner asserts that, “*the various length/volume recitations now added to the claims*” are “*not necessarily and inherently supported by the specification as originally filed*”. More specifically, the examiner asserts that the limitations of “*a volume within said container occupied by said edible particulate candy substance defines a volume that is no more than one half of the result of said container volume minus said funnel volume*”, “*said gap defines a distance between said funnel second open end and said candy article that is at least half as large as the diameter of said substantially spherical candy article*”, and “*said diameter of said candy article is at least four times as large as a diameter of said handle*” are “*not necessarily and inherently supported by the specification as originally filed*”. Applicants respectfully traverse the examiner’s rejection.

Applicants respectfully point out that the examiner's urging is not supported by the facts of the case and that contrary to the examiner's urging, applicants aver that the specification as originally filed does in fact necessarily and inherently support the noted claim limitations.

In order to demonstrate to the examiner that the noted limitations may be derived from the specification as originally filed, applicants note that "lower container member 20 defines a preferably transparent substantially hollow semi-hemispherical shape" (see for instance the specification page 6, 1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence, and drawing figures 1 and 2), "upper container member 30 defines a preferably transparent substantially hollow semi-hemispherical shape" (see for instance the specification page 6, 1<sup>st</sup> paragraph, 3<sup>rd</sup> sentence, and drawing figures 1 and 2), and thus the container 26, the assembly of lower container member 20 and upper container member 30, form a substantially hollow hemispherical shape (see for instance drawing figures 1 and 2). Applicants also note that funnel 36 defines a substantially hollow cylindrical shape (e.g. having funnel openings 37 and 38) (see for instance the specification feature table, the specification page 6, 1<sup>st</sup> paragraph, 3<sup>rd</sup> sentence, and drawing figures 1 and 2), that hard candy 42 defines "a substantially spherical shaped substantially hard candy 42" (see for instance the specification page 6, 1<sup>st</sup> paragraph, 4<sup>th</sup> sentence, and drawing figures 1 and 2), and handle 44 defines a substantially cylindrically shaped handle (see for instance drawing figures 1 and 2).

Given the indicated shaped of select portions of applicants invention, applicants note that one method of determining the claimed ratios and geometrical limitations is to take measurements from the originally filed drawings, and then use the dimensions to calculate the geometrical limitations. To assist in obtaining such dimensions for the exemplary calculation method, applicants provide herein appendix A. Specifically, appendix A was created by placing dimensions, notes, etc. as an overlay on top of originally filed figure 3A. More specifically, Appendix A1 defines figure 3A with all of the various dimensions (as scaled off of a printed copy of figure 3A) required to perform the calculations overlaid on figure 3A. Appendix A2 defines a solid black shape and notes overlaid on figure 3A. The solid black shape represents the cross-section of volume "A", with volume "A" being the volume of the container minus the volume of the funnel. The notes provide a method of mathematically calculating the volume of volume "A". The notes also provide a method of mathematically

establishing that “*a volume within said container occupied by said edible particulate candy substance defines a volume that is no more than one half of the resultant volume of said container volume minus said funnel volume*”. Appendix A3 defines a solid black shape and a note overlaid on figure 3A. The solid black shape represents the cross-section of volume “B”, with volume “B” being the volume of particulate candy substance 60. The notes provide a method of mathematically calculating the volume of volume “B”. Appendix A4 defines multiple solid black shapes and notes overlaid on figure 3A. The solid black shapes represent the cross-sections of volumes “C”, “D”, “E”, “F”, “G”, and “H” with volumes “C”, “D”, “E”, “F”, “G”, and “H” being the volumes of the lower portion of a full sphere that is not used in volume “A”, the upper portion of a full sphere that is not used in volume “A”, the volume of the substantially spherical shaped substantially hard candy 42, the volume of the portion of handle 44 that is not immersed in the particulate candy substance, the volume of funnel 36, and the volume of the lower half of the container that is not taken up by particulate candy substance 60 respectively. The notes provide a method of mathematically calculating the volumes of volume “C”, “D”, “E”, “F”, “G”, and “H” respectively. Appendix A5 defines dimensions and a note overlaid on figure 3A. The dimensions and note provide a method of mathematically establishing that, “*said gap defines a distance between said funnel second open end and said candy article that is at least half as large as any dimension of said candy article*”. Appendix A6 defines dimensions and a note overlaid on figure 3A. The dimensions and note provide a method of mathematically establishing that, “*said diameter of said candy article is at least four times as large as a diameter of said handle*”.

Applicants urge that the above explanation in combination with the provided appendix A has established a *prima facie* case that the specification, as originally filed, does in fact necessarily and inherently support the “*various length/volume recitations*” (specifically including “*a volume within said container occupied by said edible particulate candy substance defines a volume that is no more than one half of the result of said container volume minus said funnel volume*”, “*said gap defines a distance between said funnel second open end and said candy article that is at least half as large as the diameter of said substantially spherical candy article*”, and “*said diameter of said candy article is at least four times as large as a diameter of said handle*”).

Applicants point out that the above limitations are useful in providing a spill resistant container that allows the user to dip a lollipop into particulate candy and yet prevents the particulate candy from spilling. Applicants further point out that the process of dipping a solid form object into a low viscosity liquid (e.g. bubble solution, egg dye, etc.) differs from applicants disclosed invention. A greater amount of resistance is encountered when dipping a solid form object into a candy particulate as opposed to dipping a solid form object into a low viscosity liquid. Should the examiner not be convinced of the physical differences of flow of candy particulate versus a low viscosity liquid, applicants urge the examiner to physically test the difference. The examiner could for instance place a significant quantity of sugar in a table bowl such that at least about one inch deep of sugar is in the bowl. The examiner could then attempt to dip a lollipop into the sugar. The examiner will observe that if the bowl and sugar remain in a static position, that a first higher amount of resistance is encountered. If however the bowl and sugar are slightly shaken or jostled while the lollipop is dipped into the sugar, a second lower amount of resistance is encountered. If the examiner repeat the test but substitutes water for the candy particulate, the examiner will observe that a third (and virtually non-existent) amount of resistance is encountered. Applicant's invention, including the noted physical geometrical limitations, was invented to accommodate the dipping of a solid form object into a candy particulate in a spill resistant container. Prior to applicants invention, an invention having the claimed physical geometrical limitations to accommodate the dipping of a solid form object into a candy particulate has never been known.

Given applicants provided explanations and arguments, applicants respectfully request that the examiner withdraw the rejection.

**OA Item #2: Claims Rejection Presumably under 35 USC § 103(a) - Obviousness:**

The examiner has rejected claims 1 – 14 and 21-26 presumably under 35 USC § 103(a). Applicants respectfully suggest that the office action is incomplete in that no citation of law is provided as a basis for the examiner's rejection. Nevertheless, applicants presume that claims 1 – 14 and 21-26 are rejected under 35 USC § 103(a) based on the product alert reference as further evidenced by numerous references. Applicants respectfully traverse the examiners rejection. Applicants

respectfully point out that none of product alert and other the cited prior art, alone or in combination, teach all of the limitations found in any of claims 1 – 14 and 21 – 26.

Given applicants provided explanation and argument, applicants respectfully request that the examiner withdraw the rejection.

**OA Item #3: Claims Rejection under 35 USC § 103(a) - Obviousness:**

The examiner has rejected claims 1 – 14 under 35 USC § 103(a) over Price and as further evidenced by numerous references. Applicants respectfully traverse the examiners rejection. Applicants respectfully point out that none of Price and the other cited prior art, alone or in combination, teach all of the limitations found in any of claims 1 – 14 and 21 – 26.

Given applicants provided explanation and argument, applicants respectfully request that the examiner withdraw the rejection.

**OA Item #5: Examiner Comments:**

The examiner asserts that, “*the Board of Appeals has already affirmed the decision that the structural elements listed, are not patentable*”. In response, applicants respectfully point out that such assertion is not supported by the facts of the case. Applicants point out that the Board of Appeals has never reviewed the claims of the application as they are currently constituted. Applicants further respectfully point out that as the examiner is undoubtedly aware, a claim does not stand or fall based on any one limitation in the claim, but rather a claim stands or falls based on the sum totality of the limitations of the claim (e.g. all of the limitations and every word of the claim in combination). Thus, while it is true that this application has been reviewed by the Board of Appeals and a decision was rendered, such review and decision was not based on the current claims.

**OA Item #6: Examiner Comments:**

In his comments regarding the difference between particulates and liquids, the examiner asserts that, “*... contrary to the assertion that the particulates and a liquid are substantially different, they are not that different*”. Applicants aver that particulates and liquids are in fact “*that different*”. Applicants

respectfully suggests that the examiner's comments are indicative of one who is not familiar with the differences in, for instance, the property of flow of a low viscosity liquid versus a particulate. Applicants point out that not only has no one ever invented applicants same invention, but that one cannot merely substitute a conventional known spill resistant container (e.g. a container having an inwardly impending funnel) for applicants disclosed container and expect it to work with particulates as applicants have disclosed. Only applicants specially adapted invention provides for the ability to spill-proofly coat a lollipop in applicants disclosed method (i.e. allowing the particulate to coat substantially the entire outer surface of a spherical lollipop by providing for ample particulate flow pathway around the lollipop). Before merely rejecting applicants invention out-of-hand, applicants again respectfully urge the examiner to perform the experiments described in the office action response so that the examiner will come to an appreciation of the real-world problems and differences of particulates versus liquids and the containing and flowing of the same.

**Conclusion:**

Applicant notes that any amendments made by this paper which are not specifically discussed herein are made solely for the purpose of more clearly and particularly pointing out and claiming applicant's invention.

Applicant specifically reserves the right to prosecute claims of broader and differing scope than those presented herein in a continuation application.

Applicant submits that the amendments and the arguments presented herein have placed the claims in condition for allowance. Action in accordance therewith is earnestly solicited.

Applicant includes herewith via the EFS-Web transmission an RCE fee.

If the examiner has any questions or comments which may be resolved over the telephone, the examiner is requested to call Michael R. Schramm at 801-710-7793.

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Respectfully submitted,

*Michael R. Schramm*

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